

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

RECEIVED

OCT - 3 2005

Federal Communications Commission
 Office of Secretary

In the Matter of)
)
 Revision of Procedures Governing Amendments)
 To FM Table of Allotments and Changes)
 Of Community of License in the Radio Broadcast)
 Services)

MB Docket No. 05-210
 RM-10960

To: The Commission
 Attn: Marlene H. Dortch, Secretary, FCC

COMMENTS

1. These comments are being submitted by Graham Brock, Inc., Broadcast Technical Consultants ("GBI"), and are in response to the Commission's Notice of Proposed Rule Making ("Notice") in MB Docket #05-210. The Commission is soliciting comments regarding proposed changes which among other things will allow commercial FM and AM stations to change community of license by application and require the submission of FCC Form 301 applications when filing petitions to change the FM Table of Allotments.

2. *Permit AM and FM Station Community of License Changes by Minor Modification Application.* GBI supports the proposal to enable AM and FM stations to change community of license by application. As stated in the Notice, this will substantially reduce the time stations must wait to implement a change of community. Currently, the owner of a FM station must file

No. of Copies rec'd 0 + 4
 List A B C D E

a Petition to amend the Table of Allotments, followed by a minor change application to implement the change. An AM station must wait for a major change window opportunity. A one-step process is more efficient and certain. Under these rules, any minor change application can easily be accompanied by exhibits to demonstrate the proposal is in accord with Section 307(b) principals; i.e. that the proposed community is deserving of service, has the necessary community identia, the former community will continue to receive ample services and, where necessary, meets the requirements of a Tuck analysis.

3. However, GBI believes that a change in community of license should not be limited to commercial FM and AM stations. We believe that non-commercial FM stations, operating in the reserved band, should also have the opportunity to change community of license, as a minor modification, without having to await a new/major change window. As is the case with AM stations, non-commercial FM frequencies in the reserved band are not allotted through the same process as their commercial FM counterparts. In some cases, FM non-commercial stations which desire a change in community of license have waited years to submit an application to implement a change which is mutually exclusive with its license, only to become mutually exclusive with an application for a new station filed during the window. As a result, a substantial delay is imposed upon the existing station, similar to that which is experienced by existing AM stations. The same process which is proposed for AM and commercial FM stations can be easily applied to FM non-commercial stations.¹

1) The FCC presently requires the lone station in a community to provide a viable, operating station as a replacement, should it propose to change community of license. As a back-fill, a non-commercial FM or AM station could propose a contingent change in association with another station's change. While no technical mutually exclusivity would occur, the specification of a community of license which is involved with another station's change would make the applications contingent.

4. *Mandate the Filing of Form 301 When Filing Petitions for Rulemaking to Add an FM Allotment.* GBI supports the proposal to require the submission of an application to propose a new allotment and to assess a fee when an application is submitted. The submission of an application with its required certifications and exhibits would lessen speculative submissions for new allotments to those with an actual desire to build the new facilities. The added requirement to simultaneously pay a filing fee should limit participation in these proceedings to those entities with a sincere interest to actually participate in the auction process which would result.

5. *Limit the Number of Channel Changes that May be Proposed in One Proceeding to Amend the Table.* GBI believes that the Commission should not limit the number of stations/applications which can be filed on a contingent basis to implement a change in community of license, or other changes, such as channel relocations and upgrades or downgrades, to only five (including the lead application). As the Commission has stated, the broadcast spectrum has become more congested. As a result, in some cases in which we have been involved, a community of license change (with or without Class or channel changes) requires more than three other changes to implement the community of license change by the lead applicant. The Commission's staff has worked with the contingent application rules for many years, which has limited filing to no more than four applications. It does not appear that this has overburdened the processing staff. In some mutual increase of facility agreements, more than four applications have been submitted, with a request for a waiver of the four application limit. In fact, following the issuance of a Report and Order in a Rule Making proceeding involving more than

four communities, the staff has had to address more than four applications filed in response to the Order. If a limit of contingent applications is desired, we suggestion the number be set at a total above five, with the opportunity to demonstrate special factors which warrant an increase of the total number of applications.

6. GBI does not have comments regarding the elimination of the prohibition to filing Petitions to Amend the Table of FM allotments electronically nor the proposal to allow the removal of the sole service from one community and its allotment to another unserved community.

Additional Comments and Points of Interest

7. GBI notes with interest that it is not proposed at this time to establish a procedure for removing non-viable FM allotments from the FM Table of Allotments. However, GBI hopes the Commission will revisit this matter at a future date. This is not simply a housekeeping matter, but has a direct impact on the flexibility of the spectrum. Presently, if a vacant FM allotment is impeding a station's ability to upgrade or make other changes, the upgrading station might either find an alternate channel for substitution in the community where the vacant allotment is located, or seek its deletion without substitution. Although there may have been an expression of interest in a particular allotment at one time, if the allotment draws no bidder in one or more auctions, then the allotment should be deleted. Effectively, the vacant allotment is warehousing spectrum and perhaps impeding the allotment of a new channel elsewhere or a change for another station,

such as an upgrade. We suggest that, after an allotment has been considered in two auctions with no bids, the channel should be deleted without replacement. Provided the spectrum did not change dramatically, the channel could be allotted to the same or another community by someone who would actually participate in the auction process to seek authority to build the new station.

8. GBI also seeks clarification of the process by which contingent applications, under the existing rules for one-step upgrades or the proposed community of license changes, are considered by the staff. Specifically, based on discussions with staff personnel, the ability of stations to change reference coordinates of an existing allotment to accommodate another party's upgrade seems to indicate that the cooperating station actually had to relocate, rather than a simple adjustment to the existing station's reference coordinates. For example, Station A desires to upgrade to the next Class. In order to have a fully spaced reference site for the improved channel, Station B would need to relocate its reference site.² This procedure has been done in Petitions for Rule Making, after which Station A was free to file an application pursuant to contour protection. However, it appears that such a procedure is not possible in a one-step contingent application process.

9. For the purposes of a one-step upgrade application, Station A would list the clear allocation site for the upgraded channel in the allocation reference site box on FCC Form 301, demonstrating that it is clear to all existing facilities with the exception of the license site for

2) The upgraded station A would provide contour protection, pursuant to §73.215, to Station B's actual transmitter site.

Station B. Station B, in its contingent application, would list a compliant set of reference coordinates to the Station A reference site, as well as all other facilities. Station A would specify its actual desired site for the upgrade, using a directional antenna system to protect Station B at its licensed site pursuant to §73.215, with no consideration to the Station B reference site. Station B would propose its licensed facility in its Form 301 application. Further, since Station A protected Station B as a maximum facility, Station B would not seek processing pursuant to §73.215. Is this, in fact, a valid procedure to follow?³

10. These comments were prepared on behalf of Graham Brock, Inc. These comments are true and accurate to the best of our belief and knowledge.

Respectfully submitted by Graham Brock, Inc.



R. Smart Graham, Jr., President

Jefferson G. Brock, Vice-President

3) This is similar to the process outlined in the Memorandum Opinion and Order in MB Docket #03-144 (Gunnison, Crawford, Olathe, Breckenridge, Eagle, Fort Morhan, Greenwood Village and Strasburg Colorado and Laramie, Wyoming); DA-05-686, Paragraphs 14 and 15.